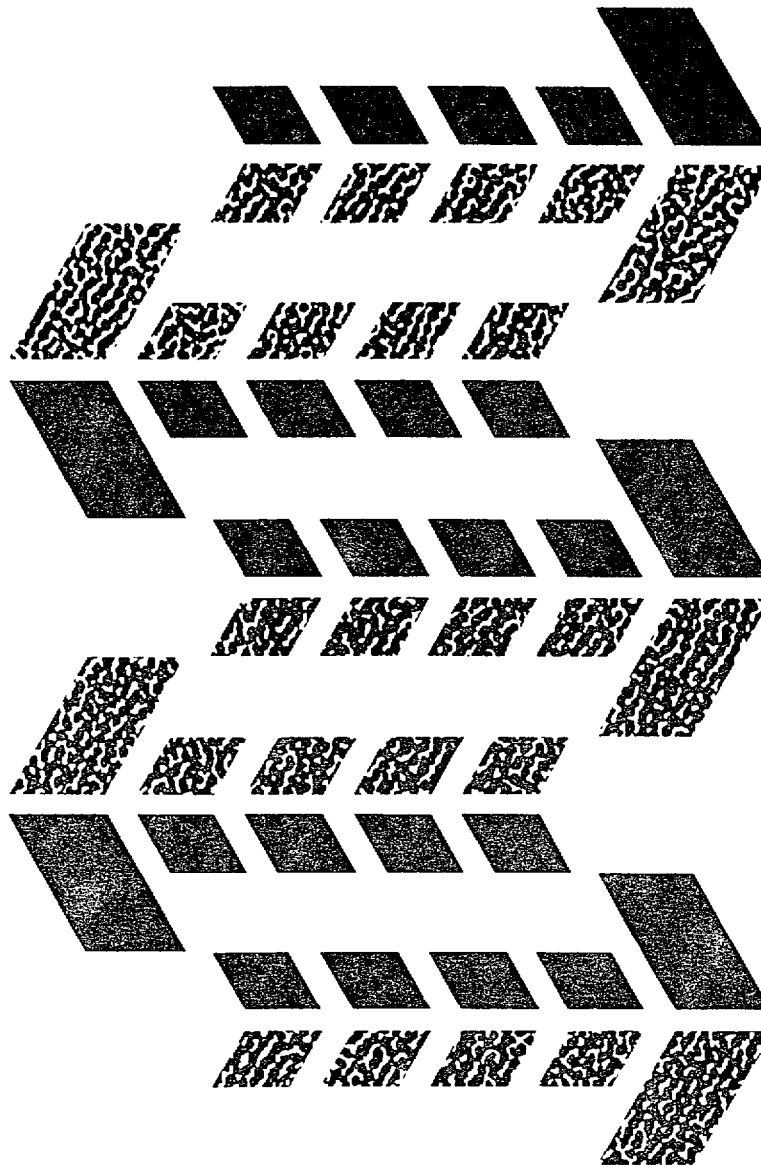




Fourth Edition  
1991

# Bid Protests at GAO: A Descriptive Guide



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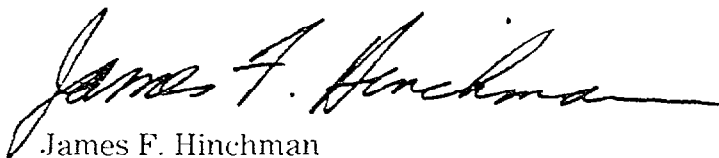
# **Bid Protests at GAO: A Descriptive Guide**

# Introduction

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The laws and regulations that govern contracting with the federal government are designed to assure that federal procurements are conducted fairly and, whenever possible, in a way that maximizes competition. On occasion, however, bidders or others interested in government procurements may have reason to believe that a contract has been or is about to be awarded improperly or illegally, or that in some way they have been unfairly denied a contract or an opportunity to compete for one. A major avenue of relief for those concerned about the propriety of an award has been the General Accounting Office (GAO), which for more than 70 years has provided an objective, independent, and impartial forum for the resolution of disputes concerning the award of federal contracts.

Over the years, GAO has developed a substantial body of law and standard procedures for consideration of bid protests. This is the fourth edition of Bid Protests at GAO: A Descriptive Guide, prepared by the Office of the General Counsel to aid those interested in the bid protest process. We issued the first edition of this booklet in 1975 to facilitate greater public familiarity with the bid protest process at GAO. In 1985, we issued the second edition of the guide incorporating the numerous changes in the procedures required by the Competition in Contracting Act of 1984. The third edition, issued in 1988, was based on revised regulations. This fourth edition of the guide incorporates changes made to the regulations effective April 1, 1991, further refining the bid protest process at GAO.



James F. Hinchman  
General Counsel

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# The Bid Protest Process

## Background

For more than 70 years GAO has provided an objective, independent, and impartial forum for the resolution of disputes concerning the award of federal contracts. Over the years, the decisions of the Comptroller General of the United States, the head of the GAO, in bid protest cases have resulted in a uniform body of law applicable to the procurement process that is relied upon by the Congress, the courts, contracting agencies, and the public. Although protesters may be represented by counsel, filing a bid protest with GAO is easy and inexpensive and does not require the services of an attorney. In addition, matters can usually be resolved more quickly by protests filed with GAO than by litigation.

The purpose of this booklet is to set forth the basic steps involved in the bid protest process together with the advantages and limitations. GAO's Bid Protest Regulations are included at the end of this booklet and should be reviewed and considered prior to filing a protest.

GAO receives several thousand bid protests annually and since 1985 has had detailed Bid Protest Regulations to inform protesters where and how to file, what to expect in the way of subsequent action, and the time frames established for completion of those actions. These regulations were promulgated to implement the Competition in Contracting Act, enacted in 1984. The regulations appear in Title 4 of the Code of Federal Regulations, Part 21. The Code of Federal Regulations is published annually and contains the revisions or additions to the regulations that were published in the Federal Register during the preceding year.

It should be noted that changes to the regulations are published from time to time in the Federal Register when made necessary by either changes in the applicable statutory law, or a binding court decision, or when experience dictates a modification is necessary. Because the regulations and the changes

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are published in the Federal Register, protesters are held to constructive knowledge of them, even though they may not have actual knowledge of their content. While we attempt to keep this publication current, it may not always be possible to do so.

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## Law and Regulations

Federal procurements are governed primarily by the Armed Services Procurement Act of 1947 and the Federal Property and Administrative Services Act of 1949, as amended, particularly by the Competition in Contracting Act. These statutes are implemented by the Federal Acquisition Regulation (FAR) and individual agency regulations, as well as by the Federal Information Resources Management Regulation, which governs the procurement of automatic data processing and telecommunication needs. The GAO Bid Protest Regulations govern GAO's handling of protests and impose certain requirements on procuring agencies, protesters, and others who participate in bid protests.

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## Bid Protests in General

A bid protest at GAO is initiated by filing a written protest with GAO's Office of General Counsel. This initial filing must contain a detailed statement of the grounds for protest, and must show that it is timely or the protest may be dismissed. The procuring agency will furnish a report to GAO and will provide a copy of its report to the protester, who is given an opportunity to comment. Other interested parties may also be provided with copies of the protest and the agency report for comments.

In appropriate cases, a hearing may be held at the discretion of GAO to develop the record through oral argument and/or oral testimony. In such cases, GAO may hold pre-hearing conferences to discuss and resolve procedural matters related to the protest, including whether restrictions on the release of documents may be imposed, which representatives of the parties should attend the hearing, and what

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procedures should be followed at the hearing. If a recording or transcript of the hearing is made, any party may obtain copies at its own expense.

After the record is complete, GAO will consider the facts and issues raised and will render a decision in the name of the Comptroller General. A copy of the decision is sent to the protester, to interested parties, and to the agency involved. The agency normally takes action in accordance with the decision. Processing time from the date of receipt of the protest to the date of decision can take up to 90 working days, depending on urgency, complexity, and workload.

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## Who May Protest

Any interested party may file a protest with GAO. An interested party for this purpose is an actual or prospective bidder or offeror with a direct economic interest in the award of a contract. Usually this refers to someone who would be in line for award if the protest were upheld.

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## What May Be Protested

GAO considers protests against solicitations and against the award or proposed award of procurement contracts by federal agencies. Although most protests are against the acceptance or rejection of a bid or proposal, protests against solicitation defects are also considered. Alleged restrictive specifications, omission of a required provision, or ambiguous or indefinite evaluation factors are bases for protest. Protests of different procurements must be separately filed; that is, only one protest may be the subject of a particular submission, and only one protest submission per package or envelope is permitted.



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There are some matters, however, that cannot be protested to GAO. Among them are the following:

1. Subcontract Awards

Protests against subcontract awards generally are not considered except in certain very limited circumstances when the award is made by or for the government, such as when a contractor acts as a purchasing agent for the government.

2. Size and Manufacturer/  
Regular Dealer  
Determinations

GAO does not consider protests involving matters which, under the law, are to be determined by other agencies. For example, disputes over whether a firm is a regular dealer or manufacturer under the Walsh-Healey Act are resolved by the Department of Labor or by the Small Business Administration if a small business is involved. Challenges of established size standards or the size status of a particular firm and challenges of the selected standard industrial classification are for review solely by the Small Business Administration.

3. Responsibility

As a matter of policy, GAO does not consider protests against an agency's determination that a firm is a responsible bidder or offeror, except in cases when there is a showing of possible fraud or bad faith on the part of the agency, because such a determination is almost entirely a matter of discretion. However, if objective standards for determining responsibility are set forth in a solicitation, GAO will consider a protest against an affirmative responsibility determination when it is claimed that the determination is contrary to those standards. GAO also generally does not consider whether a small business is or is not responsible, because by law that is to be determined by the Small Business Administration under its Certificate of Competency

Program if the contracting officer believes the small business bidder is not responsible.

4. Matter in Court

Also as a matter of policy, GAO generally will not render a decision on a protest when the matter involved is the subject of litigation before a court that has proper jurisdiction or when the matter has been decided by such a court. However, if the court requests a Comptroller General decision, the protest will be decided. The time for filing an agency report, filing comments on the report, holding and commenting on a hearing, and issuing a decision may be changed if a court so orders.

5. Contract Administration

GAO does not consider protests involving contract administration. Contract administration includes disputes arising during contract performance, such as whether the contractor is entitled to additional compensation and agency decisions not to exercise options.

6. Section 8(A) Contracts

Decisions to place or not to place a contract with a socially and economically disadvantaged firm under the Small Business Administration's section 8(a) program generally are not considered by GAO, unless there is a showing of possible fraud or bad faith on the part of government officials or that regulations may have been violated.

7. Protests to General Services Administration Board of Contract Appeals (GSBCA)

Most procurements of automatic data processing needs may be protested either to GAO or to GSBCA. Once a procurement has been protested to GSBCA, GAO will not consider a protest involving that procurement, even from another party, while the protest is pending before GSBCA. The party who has

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filed a protest pending with GSBICA may not protest the same matter to GAO under any circumstance.

#### 8. Exempt Organizations and Activities

GAO has no authority to issue decisions on bid protests involving procurement actions of organizations or activities that are not federal agencies. These include the U.S. Postal Service, the Government of Puerto Rico, the Government of the District of Columbia, and government corporations such as the Federal Deposit Insurance Corporation that are not wholly owned by the government. Also included in this category are nonappropriated fund activities, such as the Army and Air Force Exchange Service, Navy Exchange, and military clubs and theaters.

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### Where to Protest

Protests must be in writing and addressed to the General Counsel, General Accounting Office, 441 G St., NW, Washington, D.C. 20548, Attention: Procurement Law Control Group. Protests may be sent by mail, telegram, or commercial carrier or may be delivered in person. A copy of the protest must be filed with the contracting officer or the individual or location identified for that purpose in a solicitation within 1 day after the protest is filed with GAO.

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### Form of Protest

There is no prescribed form for filing a protest; formal briefs and other technical forms of pleading are not required. Protests must be in writing, be signed, and include at least one copy. Protests filed with GAO should be concise, logically arranged, and are required to contain the following:

1. Name, address, and telephone number of the protester.
2. Identity of the contracting activity and the number of the solicitation or contract.

3. A detailed statement of the legal and factual grounds for protest, information demonstrating its timeliness, copies of relevant documents, and the reasons the protest should be sustained.
4. A specific request for a ruling by the Comptroller General and a statement of the relief requested.
5. Indication that a copy of the protest was or is being filed with the contracting officer or other appropriate individual or location specified in the solicitation within 1 day.

Failure to provide this information may result in GAO not considering the protest.

## Acknowledgment of Protest

Protests filed with GAO are acknowledged unless they are summarily dismissed. In such cases, a dismissal decision or notice of dismissal will be furnished instead.

## Time for Filing

The bid protest process may delay the procurement of goods and services needed by the government. In order to minimize the possible adverse effect of these delays, time frames for bid protest actions have been established. These time limits provide protesters with a reasonable opportunity to file protests: GAO will normally refuse to consider protests that are not filed in accordance with established time frames. Under certain limited circumstances, however, GAO will consider protests that are not filed timely. The various time frames established, the manner in which timeliness is determined, and the exceptions to the timeliness requirements are described below.

### 1. Time for Filing Protests

#### a. Protests filed initially with contracting agencies

Protesters may seek resolution of their complaints initially with the contracting agencies. If a protest is

filed initially with a contracting agency, any subsequent protest to GAO must be filed within 10 working days of the protester's learning of initial adverse agency action. In many cases, this adverse agency action will be formal notification that the protest is denied. However, adverse agency action may also be indicated by bid opening or the receipt of proposals, the award of a contract to another party, rejection of a bid, or agency acquiescence in continued performance. Therefore, protesters who initially file protests with the contracting agencies cannot wait for a formal agency response to the protest, but must be alert to any possible agency action that is adverse to the protest.

b. Protests based upon solicitation improprieties

Protests alleging improprieties in a solicitation that are apparent prior to bid opening or the time set for the receipt of proposals must be filed prior to such bid opening or time set for receipt of proposals. In the case of a negotiated procurement, if an alleged impropriety did not exist in the initial solicitation but is subsequently incorporated into it by amendment, a protest based on that impropriety must be filed prior to the next closing date established for submission of revised proposals. This requirement is also applicable to the protests filed initially with the contracting agency. Thus, if a protest based on an apparent solicitation defect is filed with an agency after bid opening, a protest subsequently lodged with GAO will not be considered timely even if it is filed within 10 working days of adverse agency action.

c. All other cases

In all other cases, protests must be filed not later than 10 working days after the basis for protest is known or should have been known. For example, if a bidder believes the low bid to be nonresponsive, a protest based on the alleged nonresponsiveness must be filed within 10 working days after the

bidder learns or should have learned that the contracting officer does not regard the bid as nonresponsive. This requirement is also applicable to protests filed initially with the contracting agency, which means that a subsequent protest filed with GAO will not be considered timely unless the protest initially lodged with the agency was filed within the 10 working-day period.

2. Determining Timeliness

The time periods for filing protests are based on the working days of the federal government rather than on calendar days. This means that a protest lodged with GAO after notification of initial adverse agency action or after the basis for protest becomes known will be considered timely if filed within 10 working days of those occurrences. The term "filed" means receipt in the contracting agency (for agency-level protests) or GAO, as the case may be, and not merely the mailing or other transmission of the protest.

3. Consideration of Untimely Protests

GAO may consider any protest that is not filed timely "for good cause shown" or when a protest raises issues that are significant to procurement practices or procedures. Good cause generally refers to some compelling reason beyond the protester's control that caused the protest to be filed late. Consideration of untimely protests under this exception is not dependent upon the amount of money involved, but rather upon whether the protest raises issues of widespread interest to the procurement system.

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## Processing a Protest

### 1. General Information

Upon receipt of a protest, GAO will notify the contracting agency within 1 day by telephone and confirm that notice in writing. GAO will also mail an acknowledgment of the protest to the protester. The contracting agency will then give notice of the protest to the contractor if award has been made, or, if no award has been made, to all interested parties and furnish copies of the protest documents to those parties. The agency will prepare a documented report that is responsive to the protest and furnish the report to GAO with a copy to the protester and other interested parties. In most cases, the agency must furnish a report within 25 working days of its receipt of the telephonic notification of the protest. In exceptional cases, GAO may allow the agency a longer period.

### 2. Document Production

#### a. Requests for documents

With some exceptions, agencies are required to provide a protester with all documents relevant to the protest. GAO's Bid Protest Regulations also allow a protester to request in writing specific documents relevant to its protest grounds. Such a request must be filed concurrently with the protest. The requested documents will be furnished by the agency with the agency's report unless the documents are not relevant to the protest, or a protective order is not issued and the documents would give the protester or other parties a competitive advantage. Special procedures are used when protests involve information protected in the interest of national security or foreign policy.

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b. Protective order

GAO's Bid Protest Regulations also provide for the production of documents under protective order. Any party may request that GAO issue a protective order limiting the release of particular documents to counsel for the protester and the interested parties, where the documents are claimed to contain information that is privileged, or the release of which would result in a competitive advantage. The request for a protective order shall be filed with the General Accounting Office, with copies furnished simultaneously to all parties as soon as practicable after the protest is filed, but in no case more than 20 days after the protest filing date.

Individuals representing parties in the protest may seek access to documents covered by a protective order by submitting an application to GAO, with copies furnished simultaneously to all parties, certifying that the individual is not involved in competitive decisionmaking in connection with federal procurements. Each application shall include a detailed written statement supporting the certification. Within 2 days from receipt of the request for protective order or application for access to documents, parties may request that particular documents be excluded from coverage, or that particular individuals be included in or excluded from the protective order.

A protester may also request documents if the existence or relevance of the documents first becomes evident from the agency report. Such a request must be filed with GAO within 2 days of the receipt of the agency report. In all cases, however, GAO will be furnished with the requested documents. Within 5 days after receipt, GAO will decide whether any documents withheld from the protester or other interested parties shall be released, and if it determines the documents should be released, it will either furnish them directly or request that the agency do so. A request by any



party that these additional documents be covered by a protective order must be made within this 5-day period.

Detailed procedures for requesting documents, for processing requests for the release of documents under protective order, and for submitting applications seeking access to documents covered by protective order are found in § 21.3 of the Bid Protest Regulations. These procedures should be carefully studied before a request for documents or for a protective order is made.

### 3. Report Comments

The protester and others are given 10 working days to file comments on the agency report on the protest. A copy of these comments must be provided to the agency office that furnished the report and to all other interested parties of record. The protester, within the 10-day period, *must* either file comments, request an extension of time to do so, or state *in writing* that it wants the case to be decided on the existing record; failure to comply with this requirement will result in dismissal of the protest. GAO will assume that the protester received the agency report no later than the scheduled due date specified in the acknowledgment of protest furnished by GAO unless otherwise advised by the protester.

The time for filing comments *differs when a request for documents has been made and the agency does not furnish them to the protester with the report*. In that case, the time for filing comments is 7 days from the time of receipt of the documents, except in those circumstances when the requested documents are determined to have been properly withheld, in which event comments must be filed within 10 working days from receipt of the agency report. Extensions of the time for filing comments may be requested by any party to the protest. However, such extensions will rarely be granted.

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## Summary Dismissal

GAO will summarily dismiss a protest that on its face is clearly without legal merit, is untimely (unless it is to be considered under one of the exceptions to the timeliness requirements), fails to set forth the detailed grounds for protest, or involves a matter that GAO does not consider. In such cases, GAO will not require the submission of an agency report. If GAO learns of the basis of the dismissal from information provided by the agency after the protest is filed, GAO will dismiss the protest at that time.

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## Hearings

A hearing may be held at the discretion of GAO when requested by the protester, the contracting agency involved in the protest, or any participating interested party, as soon as practicable after receipt of the agency report by the protester and participating interested parties. The request for a hearing should identify any specific factual disputes essential to the resolution of the protest, which cannot otherwise be resolved on the written record alone.

If GAO decides that a hearing is necessary to clarify legal or factual issues in the protest, it may hold pre-hearing conferences to discuss procedural matters related to the protest, which may include whether a protective order should be issued, which representatives of the parties should attend, and what procedures should be followed at the hearing. While generally all interested parties will be invited to attend the hearing, all parties should be represented by individuals who are knowledgeable about the subject matter of the protest. These representatives may be questioned by the attending parties or the GAO hearing official. If any party refuses to attend the hearing or a witness fails to answer a relevant question, GAO may draw an inference unfavorable to the party refusing to cooperate.

Where a hearing is held, no separate comments on the agency report should be submitted unless specifically requested by GAO. All parties may file

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comments on the hearing and report as appropriate, with copies furnished to the other parties, within 7 days of the date on which the hearing was held. Hearings will generally be recorded or transcribed. Any party may obtain copies at its own expense.

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### Protection of Proprietary Information

Protesters can expect that copies of their protests will be furnished to other parties having an interest in the protest. In cases where copies of a protest and supplemental material have not been furnished to other parties by the contracting agency or by the protester directly, and where the release of such materials is not subject to a protective order, GAO will, upon request of another party, furnish a copy of the requested material, except to the extent that the withholding of information is permitted or required by law or regulation. Accordingly, if a protester considers that the protest documents contain material that may properly be withheld from other parties, a statement advising of this fact must be placed on the front page of the document and the allegedly proprietary information must be identified wherever it appears.

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### Effect of Protest on Award and Performance

When an agency is notified that a protest has been filed prior to contract award, the agency is required by law not to make an award prior to resolution of the protest unless the head of the procuring activity decides that there are urgent and compelling circumstances significantly affecting the interests of the United States that will not permit waiting for the GAO decision. When an agency is notified of a protest within 10 days after award has been made, the law requires the agency to direct the contractor to suspend performance until the protest is resolved. Performance may continue in that case only if the head of the procuring activity finds that performance of the contract is in the government's best interest or that urgent and compelling circumstances significantly affecting the interests of the United States will not permit waiting for a GAO

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decision. The agency must notify GAO in the event the agency decides to award a contract or to continue performance prior to resolution of the protest.

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## Decision

A decision is issued by the Comptroller General after all submissions have been received and after a hearing is held if one was requested. The maximum time for issuing the decision is 90 working days from the date GAO received the protest. A copy of the decision is mailed to the protester, the agency involved, and other interested parties.

The decision will either deny or sustain the protest. When a protest is sustained, the Comptroller General normally recommends appropriate corrective action. If the issue is decided before award, it can be expected that the contracting agency will take no procurement action inconsistent with the decision. When the case is decided after award, GAO may, when appropriate, give consideration to the extent of performance, the government's need for the supplies or services, and similar factors in recommending corrective action. In appropriate circumstances, termination of an improper award will be recommended. In other cases when this is not feasible, the Comptroller General may recommend that any renewal options in the contract not be exercised.

Under the law, the Comptroller General may also declare that the protester is entitled to be reimbursed for the cost of preparing its bid or proposal and for the cost of filing and pursuing the protest, including reasonable attorneys' fees. In such cases, GAO expects that the protester and the agency determine the exact amount to be paid. If the protester and the agency cannot agree, GAO will decide. Note, however, that costs to be awarded *do not* include lost profits or other common-law damages.

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When corrective action is recommended, the Competition in Contracting Act requires the agencies affected to report to the Comptroller General whenever they have not fully implemented the recommendation within 60 days. The Comptroller General, in turn, annually reports to the Congress on each instance in which recommendations were not fully implemented.

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### Request for Reconsideration

GAO will consider requests for reconsideration of a decision from the protester, any agency involved in the protest, and from any participating interested party who submitted comments during consideration of the protest. The request for reconsideration must be received in GAO not later than 10 working days after the basis for requesting reconsideration is known or should have been known. The request must contain a detailed statement of the factual and legal grounds upon which reversal or modification of the decision is warranted. Requests for reconsideration that indicate only that the requester disagrees with the decision will be dismissed. A request for reconsideration does not result in the withholding of award or the suspension of contract performance.

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### Express Option

Occasionally it will be important to have a bid protest decided in less than 90 days. GAO has established accelerated procedures known as the express option. Any party may request use of the express option, but such a request must be received by GAO not later than 3 days after the protest is filed. GAO will decide if the case is suitable for the express option and will so notify the parties. When the express option is used, the deadlines for submission of the agency report and issuance of the GAO decision are different from when the usual procedures are followed. Under the express option, the report must be filed within 10 days from the date the agency is notified that the express option will be

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used; the GAO decision will be issued within 45 *calendar* days from the date the protest was filed. Decisions on protests decided under the express option may, at the discretion of GAO and with the consent of the protester and the contracting agency, be summary in form.

GAO may withdraw the express option after it has been granted when circumstances demonstrate that the case is not suitable for resolution within the 45-day period. In such cases, GAO may establish new deadlines within the constraints of § 21.7(a) and (c) and § 21.3(c) and (g) of the regulations. Because not many cases are appropriate for the accelerated procedures, the express option will be used sparingly. In particular, the express option is usually not appropriate for any case involving a hearing.

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## Other Protests

Prior to the enactment of the Competition in Contracting Act, GAO routinely considered protests involving sales by federal agencies. Such protests will now only be considered if the agency involved agrees to have the protest considered by GAO. In such cases, all provisions of the Bid Protest Regulations apply, except that GAO will not award the protester costs and the provisions of the Competition in Contracting Act concerning the withholding of award and suspension of performance while the protest is pending will not apply.

# Bid Protest Regulations

The regulations governing the bid protest process appear in Part 21 of Title 4 of the Code of Federal Regulations. Those regulations, as in effect on April 1, 1991, are reprinted below.

## § 21.0 Definitions.

(a) "Interested party" for the purpose of filing a protest means an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract.

(b) "Interested party" for the purpose of participation in a protest means an awardee if the award has been made or, if no award has been made, all bidders or offerors who appear to have a substantial prospect of receiving an award if the protest is denied.

(c) "Federal agency" means any executive department or independent establishment in the executive branch, including any wholly owned government corporation, and any establishment in the legislative or judicial branch, except the Senate, the House of Representatives and the Architect of the Capitol and any activities under his direction.

§ 21.1 F

(d) "Contracting agency" means a federal agency which has awarded or proposes to award a contract under a protested procurement.

(e) All days referred to are deemed to be "working days" of the federal government except in § 21.4, where, in large part, the statutory language is repeated. Except as otherwise provided, in computing a period of time prescribed by these regulations, the day from which the designated period of time begins to run shall not be counted, but the last day of the period shall be counted unless that day is not a working day of the federal government, in which event the period shall include the next working day. Time for filing any document or copy thereof with the General Accounting Office expires

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at 5:30 p.m., Eastern Standard Time or Eastern Daylight Savings Time as applicable on the last day on which such filing may be made.

(f) "Adverse agency action" is any action or inaction on the part of a contracting agency which is prejudicial to the position taken in a protest filed with the agency. It may include but is not limited to: a decision on the merits of a protest; a procurement action such as the opening of bids or receipt of proposals, the award of a contract, or the rejection of a bid despite the pendency of a protest; or contracting agency acquiescence in and active support of continued and substantial contract performance.

(g) The term "filed" regarding protests to the General Accounting Office means receipt of the protest and other submissions in the General Accounting Office.

**§ 21.1 Filing a Protest.**

(a) An interested party may protest to the General Accounting Office a solicitation issued by or for a federal agency for the procurement of property or services, or the proposed award or the award of such a contract. After an interested party protests a particular procurement or proposed procurement of automated data processing equipment and services to the General Services Administration Board of Contract Appeals under section III(h) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759(h)), and while that protest is pending before the Board, that procurement or proposed procurement may not be the subject of a protest to the General Accounting Office. An interested party who has filed a protest with the Board may not protest the same matter to the General Accounting Office.

(b) Protests must be in writing and addressed as follows: General Counsel, General Accounting Office, 441 G Street, N.W., Washington, D.C. 20548, Attention: Procurement Law Control Group.



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(c) A protest filed with the General Accounting Office shall:

- (1) Include the name, address and telephone number of the protester.
- (2) Include an original signed by the protester or its representative, and at least one copy.
- (3) Identify the contracting agency and the solicitation and or contract number.
- (4) Set forth a detailed statement of the legal and factual grounds of protest including copies of relevant documents.
- (5) Specifically request a ruling by the Comptroller General of the United States (Comptroller General), and
- (6) State the form of relief requested.

(d) The protester shall furnish a copy of the protest (including relevant documents not issued by the contracting agency) to the individual or location designated by the contracting agency in the solicitation for receipt of protests. If there is no designation in the solicitation, the protester shall furnish a copy of the protest to the contracting officer. The designated individual or location, or if applicable, the contracting officer must receive a copy of the protest no later than 1 day after the protest is filed with the General Accounting Office. The protest document must indicate that a copy has been furnished or will be furnished within 1 day to the appropriate individual or location.

(e) No formal briefs or other technical forms of pleading or motion are required. Protest submissions should be concise, logically arranged, and clearly state legally sufficient grounds of protest. Protests of different procurements should be separately filed. If requested, the General Accounting

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Office will time date stamp and return a copy of the protest provided by the protester.

(f) A protest filed with the General Accounting Office may be dismissed for failure to comply with any of the requirements of this section. However, a protest shall not be dismissed for failure to comply with paragraph (d) of this section where the contracting officer has actual knowledge of the basis of protest, or the agency, in the preparation of its report, is not otherwise prejudiced by the protester's noncompliance.

**§ 21.2 Time for Filing**

(a)(1) Protests based upon alleged improprieties in a solicitation which are apparent prior to bid opening or the time set for receipt of initial proposals shall be filed prior to bid opening or the time set for receipt of initial proposals. In procurements where proposals are requested, alleged improprieties which do not exist in the initial solicitation but which are subsequently incorporated into the solicitation must be protested not later than the next closing date for receipt of proposals following the incorporation.

(2) In cases other than those covered in paragraph (a)(1) of this section, protests shall be filed not later than 10 days after the basis of protest is known or should have been known, whichever is earlier.

(3) If a protest has been filed initially with the contracting agency, any subsequent protest to the General Accounting Office filed within 10 days of formal notification of or actual or constructive knowledge of initial adverse agency action will be considered, provided the initial protest to the agency was filed in accordance with the time limits prescribed in paragraphs (a)(1) and (a)(2) of this section, unless the contracting agency imposes a more stringent time for filing, in which case the agency's time for filing will control. In cases where an alleged impropriety in a solicitation is timely

protested to a contracting agency, any subsequent protest to the General Accounting Office must be filed within the 10-day period provided by this paragraph.

(b) Protests which are untimely on their face may be dismissed. It is the protester's obligation to include in its protest all the information needed to demonstrate its timeliness and protesters will not be permitted to introduce for the first time in a request for reconsideration filed pursuant to § 21.12 the information upon which the timeliness of the protest relies.

(c) The General Accounting Office, for good cause shown, or where it determines that a protest raises issues significant to the procurement system, may consider any protest which is not filed timely.

§ 21.3 Notice of Protest,  
Submission of Agency  
Report and Time for Filing  
of Comments on Report.

(a) The General Accounting Office shall notify the contracting agency by telephone within 1 day of the filing of a protest, and shall promptly mail confirmation of that notification to the contracting agency and also mail an acknowledgment of the protest to the protester. The contracting agency shall immediately give notice of the protest to the contractor if award has been made or, if no award has been made, to all bidders or offerors who appear to have a substantial and reasonable prospect of receiving an award if the protest is denied. The contracting agency shall furnish copies of the protest submissions to such parties with instructions to communicate further directly with the General Accounting Office. All parties shall furnish copies of any such communications to the contracting agency and to other participating interested parties.

(b) Material submitted by a protester will not be withheld from any interested party outside the government or from any federal agency which may be involved in the protest except to the extent that the

withholding of information is permitted or required by law or regulation. If the protester considers that the protest contains material which should be withheld, a statement advising of this fact must be affixed to the front page of the protest submission and the allegedly protected information must be so identified wherever it appears.

(c) The contracting agency shall file a complete report on the protest with the General Accounting Office within 25 days from the date of the telephone notice of the protest from the General Accounting Office. The report shall contain copies of all relevant documents including, as appropriate: the protest, the bid or proposal submitted by the protester, the bid or proposal of the firm which is being considered for award, or whose bid or proposal is being protested, all evaluation documents, the solicitation, including the specifications or portions relevant to the protest, the abstract of bids or offers or relevant portions, any other documents that are relevant to the protest, and the contracting officer's statement setting forth findings, actions, recommendations and any additional evidence or information deemed necessary in determining the validity of the protest. The statement shall be fully responsive to all allegations of the protest which the agency contests. Pursuant to section 3553(f) of the Competition in Contracting Act of 1984, 31 U.S.C. § 3553(f) (1988), the contracting agency shall simultaneously furnish a copy of the report to the protester and interested parties who have responded to the notice given under paragraph (a) of this section. The copy of the report filed with the General Accounting Office shall also identify the parties who have been furnished copies of the report.

(d) Copies of the report on the protest provided to the General Accounting Office, the protester and interested parties entitled to receive them under paragraph (c) of this section shall include all relevant documents, subject to the following:

(1) Any party may request that the General Accounting Office issue a protective order limiting the release of particular documents to counsel for the protester and the interested parties entitled to receive the documents, where the documents are claimed to contain information that is privileged, or the release of which would result in a competitive advantage. The request shall be filed with the General Accounting Office, with copies furnished simultaneously to all parties as soon as practicable after the protest is filed, but in no case more than 20 days after the protest filing date.

(2) Requests by any party that particular documents be excluded from coverage of the protective order, or that particular parties or individuals be included in or excluded from the protective order, shall be filed with the General Accounting Office, with copies furnished simultaneously to all parties, within 2 days after receipt of a copy of the protective order request. Any rebuttal to such a request shall be filed with the General Accounting Office, with copies furnished simultaneously to all parties, within 1 day after receipt of a copy of the request. The terms of the protective order shall be established prior to the due date for the agency report under § 21.3(c).

(3) All individuals seeking access to documents covered by a protective order issued under § 21.3(d)(2) must represent a party and shall submit an application to the General Accounting Office, with copies furnished simultaneously to all parties, certifying that the individual is not involved in competitive decisionmaking in connection with federal procurements. Each application shall include a detailed written statement supporting the certification. The certification need not be furnished by employees of the contracting agency.

(4) Where the existence or relevance of additional documents first becomes evident after a protective order has been issued under § 21.3(d)(2), any party

may request that the documents be covered by the protective order. Any party to the protective order also may request that individuals not already covered by the protective order be included in the order. Requests as to additional documents or individuals shall be filed with the General Accounting Office, with copies furnished simultaneously to all parties. Any rebuttal to such a request must be filed within 1 day after receipt of a copy of the request.

(5) Any violation of the terms of a protective order may result in the imposition of such sanctions as the General Accounting Office deems appropriate, including but not limited to referral of a possible violation to appropriate bar associations or other disciplinary bodies, and restricting the practice of counsel before the General Accounting Office. A party whose protected information is improperly disclosed shall be entitled to all remedies under law or equity, including breach of contract.

(6) Where a protective order is not issued, and the agency withholds relevant documents from a party for any reason, the agency shall include in the report filed with the General Accounting Office and in the copies of the report provided to all parties a list of the documents withheld and the reasons for withholding them. All relevant documents and any documents specifically requested by the protester shall be furnished to the General Accounting Office.

(c) A protester may request in writing specific documents relevant to its protest grounds, including but also in addition to the documents described in § 21.3(c). The request must be filed with the General Accounting Office and with the individual or location referred to in § 21.1(d) concurrent with the filing of the protest. A request that fails to meet one or more of the requirements of this paragraph may be dismissed.

(f) The protester may subsequently request additional documents if the existence or relevance of

such documents first becomes evident from the agency report. Any request for such documents must be filed with the General Accounting Office and the contracting agency within 2 days of the protester's receipt of the agency report. The contracting agency must respond within 5 days by filing with the General Accounting Office and the other parties, the requested documents in accordance with § 21.3(d). A request by any party that release of any additional documents be covered by protective order shall be made in accordance with § 21.3(d)(4) within this 5-day period.

(g) The General Accounting Office shall decide within 5 days of the receipt of the contracting agency's report under paragraph (c) or its response under paragraph (f) whether any documents withheld from the protester or other interested party shall be released to the protester or other interested party and whether that release should be pursuant to a protective order under § 21.3(d)(2). If the General Accounting Office determines that withheld documents should be released, it will furnish the documents to the party or parties entitled to receive them subject to the terms of the protective order, if any, or advise the agency to do so.

(h) When withheld documents are so released, the protester's comments on the agency report shall be filed within 7 days of its receipt of the released documents. If the General Accounting Office determines that the documents were properly withheld, the protester's comments are due within 10 days of its receipt of the agency report as under § 21.3(j).

(i) When the contracting agency fails to provide documents in accordance with § 21.3(d), the General Accounting Office may take any or all of the following actions:

(1) Provide the documents to the party or parties entitled to receive them;

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(2) Use any authority available under chapter 7 of title 31, United States Code, to obtain the documents;

(3) Draw an inference unfavorable to the agency;

(4) Not allow responses to designated arguments or bases of protest by the agency; or

(5) Impose such other sanctions as may be appropriate.

(j) Comments on the agency report shall be filed with the General Accounting Office within 10 days after receipt of the report, with a copy furnished by the commenting party to the contracting agency and other participating interested parties. Failure of the protester to file comments, or to file a written statement requesting that the case be decided on the existing record, or to request an extension under this section within the 10-day period will result in dismissal of the protest. The General Accounting Office will assume the protester received the agency report no later than the scheduled due date as specified in the acknowledgment of protest furnished by the General Accounting Office, unless otherwise advised by the protester. The General Accounting Office, upon a showing that the specific circumstances of the protest require a period longer than 10 days for the submission of comments on the agency report, may set a new date for the submission of such comments. Extensions are to be considered exceptional and will be granted sparingly.

(k) The contracting agency may request, in writing, an extension of the 25-day report submission time period. The request shall set forth the reasons for which the extension is needed. The General Accounting Office will determine, in writing, whether the specific circumstances of the protest require a period longer than 25 days for the submission of the report and, if so, will set a new date for the submission of the report. Extensions are to be



considered exceptional and will be granted sparingly. The agency should make its request for an extension as promptly as possible to permit it to submit a timely report should the General Accounting Office deny the request.

(l) The General Accounting Office may at its discretion permit the submission of additional statements by the parties, including the contracting agency, if the party requests to do so and the General Accounting Office determines such statements are necessary for the fair resolution of the protest. The General Accounting Office may at its discretion permit the submission of statements relevant to the protest from parties other than interested parties as defined in §§ 21.0(a) and (b) such as federal agencies other than the contracting agency or trade associations.

(m) Notwithstanding any other provision of this section, when on its face a protest does not state a valid basis for protest or is untimely (unless the protest is to be considered pursuant to § 21.2(b)) or otherwise is not for consideration, the General Accounting Office will summarily dismiss the protest without requiring the submission of an agency report. When the propriety of a dismissal becomes clear only after information is provided by the contracting agency or is otherwise obtained by the General Accounting Office, it will dismiss the protest at that time. If the General Accounting Office has dismissed the protest, it will notify the contracting agency that a report need not be submitted. Among the protests which may be dismissed without consideration of the merits are those concerning the following:

(1) Contract Administration. The administration of an existing contract is within the discretion of the contracting agency. Disputes between a contractor and the agency are resolved pursuant to the disputes clause of the contract and the Contract Disputes Act of 1978, 41 U.S.C. 601-13 (1988).

(2) Small Business Size Standards and Standard Industrial Classification. Challenges of established size standards or the size status of particular firms, and challenges of the selected standard industrial classification are for review solely by the Small Business Administration. 15 U.S.C. 637(b)(6) (1988); 13 C.F.R. 121.3-6.

(3) Small Business Certificate of Competency Program. Any referral made to the Small Business Administration pursuant to section 8(b)(7) of the Small Business Act, or any issuance of a certificate of competency or refusal to issue a certificate under such section is not reviewed by the General Accounting Office absent a showing of possible fraud or bad faith on the part of the government officials.

(4) Procurements under section 8(a) of the Small Business Act. Since contracts are let under section 8(a) of the Small Business Act to the Small Business Administration at the contracting officer's discretion and on such terms as agreed upon by the procuring agency and the Small Business Administration, the decision to place or not to place a procurement under the 8(a) program is not subject to review absent a showing of possible fraud or bad faith on the part of government officials or that regulations may have been violated. 15 U.S.C. 637(a) (1988).

(5) Affirmative Determination of Responsibility by the Contracting Officer. Because a determination that a bidder or offeror is capable of performing a contract is based in large measure on subjective judgments which generally are not readily susceptible of reasoned review, an affirmative determination of responsibility will not be reviewed, absent a showing that such determination was made fraudulently or in bad faith or that definitive responsibility criteria in the solicitation were not met.

(6) Procurement Protested to the General Services Administration Board of Contract Appeals. Interested parties may protest a procurement or proposed procurement of automated data processing equipment and services to the General Services Administration Board of Contract Appeals. After a particular procurement or proposed procurement is protested to the Board, the procurement may not, while the protest is before the Board, be the subject of a protest to the General Accounting Office. An interested party who has filed a protest with the Board may not protest the same matter to the General Accounting Office. Competition in Contracting Act of 1984, 40 U.S.C. 759(h) (1988).

(7) Protests not filed either in the General Accounting Office or the contracting agency within the time limits set forth in § 21.2.

(8) Procurements by Agencies Other Than Federal Agencies as Defined by Section 3 of the Federal Property and Administrative Services Act of 1949, 40 U.S.C. 472. Protests of procurements or proposed procurements by such agencies (e.g., U.S. Postal Service, Federal Deposit Insurance Corporation, nonappropriated fund activities) are beyond the General Accounting Office bid protest jurisdiction as established in section 2741 of the Competition in Contracting Act of 1984, 31 U.S.C. 3551-3556 (1988).

(9) Walsh-Healey Public Contracts Act. Challenges of the legal status of a firm as a regular dealer or manufacturer within the meaning of the Walsh-Healey Act are for determination solely by the procuring agency, the Small Business Administration (if a small business is involved) and the Secretary of Labor. 41 U.S.C. 35-45 (1988).

(10) Subcontractor Protests. The General Accounting Office will not consider subcontractor protests except where the subcontract is by or for the government under the provisions of § 21.11.

(11) Judicial Proceedings. The General Accounting Office will not consider protests where the matter involved is the subject of litigation before a court of competent jurisdiction, unless the court requests a decision by the General Accounting Office. The General Accounting Office will not consider protests where the matter involved has been decided on the merits by a court of competent jurisdiction.

(n) A protest may not be delayed by the failure of a party to file a submission within the specified time limits. Consequently, the failure of any party or contracting agency to comply with the prescribed time limits may result in resolution of the protest without consideration of the untimely submission.

§ 21.4 Withholding of  
Award and Suspension of  
Contract Performance.

Sections 3553(c) and (d) of the Competition in Contracting Act of 1984, 31 U.S.C. 3553(c) and (d) (1988), set forth the following requirements regarding the withholding of award and suspension of contract performance when a protest is filed with the General Accounting Office. There is an additional requirement contained in Federal Acquisition Regulation § 33.104(d) that the contracting officer give written notice to the protester and other interested parties of any decision to proceed with award or continue contract performance. The requirements are included here for informational purposes.

(a) When the contracting agency receives notice of a protest from the General Accounting Office prior to award of a contract, it may not award a contract under the protested procurement while the protest is pending unless the head of the procuring activity responsible for award of the contract determines in writing and reports to the General Accounting Office that urgent and compelling circumstances significantly affecting interests of the United States will not permit waiting for the General Accounting Office decision. This finding may be made only if

the award is otherwise likely to occur within 30 days.

(b) When the contracting agency receives notice of a protest from the General Accounting Office after award of a contract, but within 10 days of the date of contract award, it shall immediately direct the contractor to cease contract performance and to suspend related activities that may result in additional obligations being incurred by the government under that contract while the protest is pending. The head of the procuring activity responsible for award of the contract may authorize contract performance notwithstanding the pending protest if he determines in writing and reports to the General Accounting Office that:

(1) Performance of the contract is in the government's best interest, or

(2) Urgent and compelling circumstances significantly affecting interests of the United States will not permit waiting for the General Accounting Office's decision.

#### § 21.5 Hearings.

(a) A request for a hearing may be made by the protester, an interested party who has responded to the notice given under § 21.3(a), or the contracting agency. The request shall set forth the reasons why a hearing is needed for the particular protest and should be made at the earliest possible time in the protest proceeding. The request should also identify any specific factual disputes essential to the resolution of the protest which the requester believes cannot be resolved without oral testimony. The determination to hold a hearing will be at the discretion of the General Accounting Office.

(b) Prior to the hearing, the General Accounting Office may hold pre-hearing conferences to discuss and resolve procedural matters related to the protest, which may include such matters as whether a

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protective order should be issued under § 21.3(d)(2), whether other restrictions on the release of documents may be imposed, which representatives of the parties should attend the hearing and what procedures should be used at the hearings.

(c) Hearings will be conducted by a General Accounting Office hearing official on a date set by the General Accounting Office as soon as practicable after receipt by the protester and participating interested parties of the agency report and relevant documents. Although hearings ordinarily will be conducted at the General Accounting Office in Washington, D.C., hearings may, at the discretion of the General Accounting Office, be conducted at other appropriate locations. Ordinarily, only one hearing will be held on a protest.

(d) All interested parties as defined in § 21.0(b) shall be invited to attend the hearing. Other participants in the procurement who are not interested parties may be permitted to attend as observers and may participate in the hearing only to the extent allowed by the General Accounting Office hearing official. If privileged information or information, the release of which would result in a competitive advantage, is to be disclosed at the hearing, the General Accounting Office hearing official, in his or her discretion, may restrict attendance for all or part of the proceeding.

(e) All parties shall be represented by individuals who are knowledgeable about the subject matter of the protest. The General Accounting Office may designate representatives of the parties to attend the hearing. Such representatives may be questioned by the attending parties and the hearing official under such procedures as the General Accounting Office may establish.

(f) Hearings shall normally be recorded and/or transcribed. If a recording or transcript is made, any party may obtain copies at its own expense.

(g) If the representative of any party, whose attendance has been requested by the General Accounting Office, refuses to attend such hearing or fails to answer a relevant question, the General Accounting Office may draw an inference unfavorable to the party refusing to cooperate.

(h) If a hearing is held, no separate comments under § 21.3(j) should be submitted unless specifically requested by the General Accounting Office. All parties may file comments on the hearing and report as appropriate with the General Accounting Office, with copies furnished to the other parties within 7 days of the date on which the hearing was held. The General Accounting Office may adjust the time for submission of comments in appropriate circumstances. Failure of the protester to file comments, or to file a written statement requesting that the case be decided on the existing record by the date due may result in dismissal of the protest.

(i) In the post-hearing comments, parties should reference all testimony, admissions, or comments made during the hearing that they consider relevant to the disposition of the protest. Where appropriate, relevant findings of fact by the General Accounting Office hearing official shall be part of the bid protest decision.

§ 21.6 Remedies.

(a) If the General Accounting Office determines that a solicitation, proposed award, or award does not comply with statute or regulation, it shall recommend that the contracting agency implement any combination of the following remedies which it deems appropriate under the circumstances:

(1) Refrain from exercising options under the contract:

- (2) Terminate the contract;
  - (3) Reopen the contract;
  - (4) Issue a new solicitation;
  - (5) Award a contract consistent with statute and regulation; or
  - (6) Such other recommendations as the General Accounting Office determines necessary to promote compliance.
- (b) In determining the appropriate recommendation, the General Accounting Office shall, except as specified in paragraph (c) of this section, consider all the circumstances surrounding the procurement or proposed procurement including, but not limited to, the seriousness of the procurement deficiency, the degree of prejudice to other interested parties or to the integrity of the competitive procurement system, the good faith of the parties, the extent of performance, cost to the government, the urgency of the procurement and the impact of the recommendation on the contracting agency's mission.
- (c) If the head of the procuring activity makes the finding referred to in § 21.4(b)(1) that performance of the contract notwithstanding a pending protest is in the government's best interest, the General Accounting Office shall make its recommendation under paragraph (a) of this section without regard to any cost or disruption from terminating, reopening or reawarding the contract.
- (d) If the General Accounting Office determines that a solicitation, proposed award, or award does not comply with statute or regulation it may declare the protester to be entitled to reasonable costs of:
- (1) Filing and pursuing the protest, including attorneys' fees; and



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(2) Bid and proposal preparation.

(e) If the contracting agency decides to take corrective action in response to a protest, the General Accounting Office may declare the protester to be entitled to recover reasonable costs of filing and pursuing the protest, including attorneys' fees. The protester may file comments with the General Accounting Office regarding whether costs should be awarded within 10 days after being advised that the contracting agency has decided to take corrective action. The protester shall furnish a copy of any such comments to the contracting agency, which may file a response within 10 days after receipt of the protester's comments, with a copy furnished to the protester. The General Accounting Office will issue a declaration of entitlement to costs for each case where costs are awarded after corrective action is taken.

(f)(1) If the General Accounting Office decides that the protester is entitled to the recovery of such costs, the protester and the contracting agency shall attempt to reach agreement on the amount of the costs. The protester shall file its claim for costs, detailing and certifying the time expended and costs incurred, with the contracting agency within 60 days after receipt of the decision on the protest or the declaration of entitlement to costs. Failure to file the claim within such time shall result in forfeiture of the protester's right to recover its costs. The General Accounting Office may consider an untimely claim for good cause shown.

(2) The contracting agency shall issue a decision on the claim for costs as soon as practicable after the claim is filed. If the protester and the contracting agency cannot reach agreement within a reasonable time, the General Accounting Office will determine the amount. In such cases, the General Accounting Office may declare the protester to be entitled to

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the costs of pursuing the claim for costs before the General Accounting Office.

§ 21.7 Time for Decision  
by the General Accounting  
Office.

(a) The General Accounting Office shall issue a decision on a protest within 90 days from the date the protest is filed with it.

(b) In those protests for which the General Accounting Office invokes the express option under § 21.8, the General Accounting Office shall issue a decision within 45 calendar days from the date the protest is filed with it.

(c) Under exceptional circumstances the General Accounting Office may extend the deadline in paragraph (a) of this section on a case-by-case basis by stating in writing the reasons that the specific circumstances of the protest require a longer period

§ 21.8 Express Option.

(a) At the request of the protester, the contracting agency or an interested party for an expeditious decision, the General Accounting Office will consider the feasibility of using an express option.

(b) The express option will be invoked solely at the discretion of the General Accounting Office only in those cases suitable for resolution within 45 calendar days.

(c) Requests for the express option must be in writing and received in the General Accounting Office no later than 3 days after the protest is filed. The General Accounting Office will determine within 2 days of receipt of the request whether to invoke the express option and will notify the contracting agency, protester and interested parties who have responded to the notice under § 21.3(a).

(d) When the express option is used the filing deadlines in § 21.3 and the provisions of § 21.5 shall not apply and:

(1) The contracting agency shall file a complete report with the General Accounting Office on the protest within 10 days from the date it receives notice from the General Accounting Office that the express option will be used and furnish copies of the report to the protester and interested parties who have responded to the notice under § 21.3(a).

(2) Comments on the agency report shall be filed with the General Accounting Office within 5 days after receipt of the report with a copy furnished by the commenting party to the contracting agency and other participating interested parties.

(3) The General Accounting Office may arrange a conference to ascertain and clarify the material issues at any time deemed appropriate during the protest proceedings.

(4) The General Accounting Office shall issue its decision within 45 calendar days from the date the protest is filed with it. Decisions on protests decided under the express option may at the discretion of the General Accounting Office and with the consent of the protester and the contracting agency be summary in form.

(e) Where circumstances demonstrate that the case is no longer suitable for resolution within 45 calendar days, the General Accounting Office may establish new deadlines within the constraints established in § 21.7(a) and (c) regarding the issuance of a decision and in § 21.3(i) and (j) regarding the submission of the agency report.

§ 21.9 Effect of Judicial Proceedings.

(a) The General Accounting Office will dismiss any protest where the matter involved is the subject of litigation before a court of competent jurisdiction, unless the court requests a decision by the General Accounting Office. The General Accounting Office will dismiss any protest where the matter involved

has been decided on the merits by a court of competent jurisdiction.

(b) Where the court requests a decision by the General Accounting Office, the times for filing the agency report (§ 21.3(c)), filing comments on the report (§ 21.3(j)), holding a hearing and filing comments (§ 21.5), and issuing a decision (§ 21.7) may be changed if the court so orders.

**§ 21.10 Signing and  
Distribution of Decisions.**

Each bid protest decision shall be signed by the Comptroller General or a designee for that purpose. A copy of the decision shall be made available to all participating interested parties, the protester, the head of the contracting activity responsible for the protested procurement, the senior procurement executive of each federal agency involved, and any member of the public.

**§ 21.11 Nonstatutory  
Protests.**

(a) The General Accounting Office may consider protests concerning sales by a federal agency or procurements by agencies of the government other than federal agencies as defined in § 21.0(c) if the agency involved has agreed in writing to have its protests decided by the General Accounting Office.  
(b) All of the provisions of these Bid Protest Regulations shall apply to any nonstatutory protest decided by the General Accounting Office except for the provisions of § 21.6(d) pertaining to entitlement to reasonable costs of filing and pursuing the protest, including attorneys' fees. Sections 3553(c) and (d) of the Competition in Contracting Act of 1984, 31 U.S.C. 3553(c) and (d) (1988), pertaining to withholding of award and suspension of contract performance shall not apply.

**§ 21.12 Request for  
Reconsideration.**

(a) Reconsideration of a decision of the General Accounting Office may be requested by the protester, any interested party who participated in the

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protest, and any federal agency involved in the protest. The General Accounting Office will not consider any request for reconsideration which does not contain a detailed statement of the factual and legal grounds upon which reversal or modification is deemed warranted, specifying any errors of law made or information not previously considered.

(b) A request for reconsideration of a decision of the General Accounting Office shall be filed, with copies to any federal agency and interested parties who participated in the protest, not later than 10 days after the basis for reconsideration is known or should have been known, whichever is earlier. The term "filed" as used in this section means receipt in the General Accounting Office.

(c) A request for reconsideration shall be subject to these bid protest regulations consistent with the need for prompt and fair resolution of the matter. The filing of a request for reconsideration will not invoke Section 3553(c) or (d) of the Competition in Contracting Act of 1984, 31 U.S.C. 3553(c) and (d) (1988), relating to the withholding of award and the suspension of contract performance.

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